

GOVERNMENT OF PAKISTAN  
CUSTOMS APPELLATE TRIBUNAL, BENCH-II,  
3<sup>RD</sup> FLOOR, JAMIL CHAMBER, SADDAR, KARACHI  
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Before: Mr. Muhammad Sajid Abbasi, Chairman/Member Judicial-II, Karachi

Customs Appeal No. Old No.218/2017  
New No. K-623/2018

M/s Usama Enterprises,  
through office bearing No. 707,  
7<sup>TH</sup> Floor, Business Centre,  
opposite I.I.Chundrigar Road,  
Karachi

Customs Appeal No. Old No.219/2017  
New No. K-624/2018

M/s Marhaba Trading Company,  
Mr. Sh. Waseem Ahmed,  
through office bearing No. 707,  
7<sup>TH</sup> Floor, Business Centre,  
opposite I.I.Chundrigar Road,  
Karachi

Customs Appeal No. Old No.220/2017  
New No. K-625/2018

M/s Universal Trading,  
Mr. Adnan Ahmed Sheikh,  
through office bearing No. 707,  
7<sup>TH</sup> Floor, Business Centre,  
opposite I.I.Chundrigar Road,  
Karachi

APPELLANTS

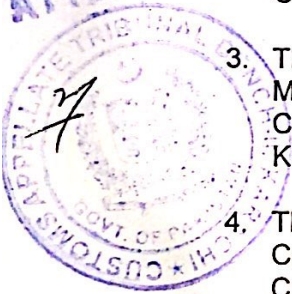
VERSUS

1. The Collector of Customs, (Appeals),  
81-C, PECHS, Block-6, Karachi.
2. The Additional Collector of Customs  
Model Customs Collectorate of PaCCS,  
Custom House Karachi.
3. The Director of Customs, (Post Clearance Audit)  
Model Customs Collectorate  
Customs House,  
Karachi
4. The Deputy Collector Customs-Recovery  
Customs Collectorate Recovery Cell  
Custom House,  
Karachi.
5. The Attachment Officer- Recovery,  
Model Custom Collectorate of Appraisement  
(East) Custom House,  
Karachi

RESPONDENTS

Mr. Shehzad Saeed, Advocate, present for the Appellant  
Mr. Zeshan Wazir, A.O, present for the Respondent.

ATTESTED





disposes filed by the Appellants against the Order-in-Appeal Nos.9285 to 9288/2014 dated 10.10.2014 passed by the Collector of Customs (Appeals), Karachi. As both the appeals involve identical facts, issues of law, therefore, these were heard together and are being decided through this common order in the light of judgment of the Hon'ble High Court of Sindh in Customs Reference No.157/2008 (S.M. Naqi S/o Syed Muhammad Hussain, Karachi Vs. Collector of Customs (Adjudication-I) & Others, Karachi.

2. Brief, facts of the case as stated in the impugned order are that the Directorate of Post Clearance Audit, Lahore reported that the appellants imported (03) consignment of Monosodium Glutamate vide Goods Declaration bearing CRN Nos.(i) I-HC-284064-31052007, (ii) I-HC-452398-14112007 & (iii) I-HC-168344-19012007. These consignments were cleared from MCC-PaCCS on claiming the benefit of exemption from Sales Tax vide SRO 525(I)/2006 dated 05.06.2006, SRO 509(I)/2007 dated 09.06.2007 and Income Tax vide SRO 638(I)/2005 dated 27.06.2005. The goods were assessed accordingly under Pakistan Customs Tariff heading 2922.4210. The scrutiny of the relevant record revealed that "Monosodium Glutamate" is not dye intermediate product, therefore the exemption of 525(I)/2006 dated 05.06.2006, SRO 509(I)/2007 dated 09.06.2007 and Income Tax vide SRO 638(I)/2005 dated 27.06.2005 is not admissible to the respondents. Resultantly, an amount of Rs.8,75,630/- is recoverable from the respondent. Thus, the appellant evaded the legitimate revenue amount and have contravened the relevant provisions of law.

The adjudicating officer vide Customs Order-in-Original No.109 of 2012 (Manual 105 Cases) dated 28.05.2012 held that the charges leveled by the Appellants are established. The operative part of the impugned order reads as under:-

"I have examined the case record, written reply of the respondents and comments of the department. It has been alleged that the respondent imported "Monosodium Glutamate" and availed exemption under SRO 525(I)/2006 dated 05.06.2006, SRO 509(I)/2007 dated 09.06.2007 and SRO 638(I)/2005 dated 27.06.2005. The impugned goods were assessed under PCT heading 2922.4210, "Monosodium Glutamate" is not "dye intermediate" therefore the exemption under aforesaid SRO's is available to the respondents.

ATTESTED





It has been observed that the demand of sales tax and income tax on the imported sodium glutamate has been raised on the ground that the benefit of exemption availed under 525(I)/2006 dated 05.06.2006, SRO 509(I)/2007 dated 09.06.2007 and SRO 638(I)/2005 dated 27.06.2005 was not in order. It is noted that Sr. No. 47 of the Table in SRO 509(I)/2007 dated 09.06.2007 allows zero-rating of sales tax on dyes intermediates falling in the PCT headings as mentioned against this serial number, which include 2922.0000. Although Monosodium Glutamate, classified under PCT heading 2922.4210, falls under the said four digit heading 29.22 but it has to be a "dyes intermediate" to qualify for the said exemption. This item is used as food additive and is commonly marketed as flavour enhancer. The Wikipedia write-up on monosodium glutamate has also been seen. It does not mention any dye-related use of monosodium glutamate. Therefore, it is held that monosodium glutamate is not a dye intermediate and therefore is not entitled to the benefit of SRO 509(I)/2007 dated 09.06.2007. On the same analogy, benefit of SRO 638(I)/2005 dated 27.06.2005 is also not available. It is this concluded that the benefit of exemption availed by the respondents was not in order. Accordingly, the demand of Rs. 8,75,630/- (Sales Tax of Rs.573,557/-, Additional Sales Tax of Rs.76,474/- and Income Tax of Rs. 225,599/- is in order and the respondents are ordered to pay the same along with default surcharge payable under section 34 of the Sales Tax Act, 1990. Further, a penalty of Rs.1,00,000/- is also imposed on the importer under clause 14 of Section 156(1) of the Customs Act, 1969."

4. The appellant filed an appeal against the above Order-in-Original before the Collector of Customs (Appeals), Karachi, who decided the appeal vide Order-in-Appeal No.9285 to 9288/2014 dated 10.10.2014. Operative part of the said Order-in-Appeal is reproduced hereunder:-

"I have examined the case record. The adjudicating officer has rightly adjudged that the impugned goods are not entitled for benefit of SRO 509(I)/2007 and SRO 638(I)/2005 as they are not dyes intermediate. The appellants have not been able to provide valid ground. The appeal being devoid of merit is rejected.

This order shall apply mutatis mutandis on the following cases having the same facts, circumstances and points of law."

S.No.	Appeal No.	Appellant Name	SHOW CAUSE NOTICE NO.
01	Cus/4074(A)/2012/ PACCS	M/s. Marhaba Trading Company  Mr. Waseem Ahmed Shaikh	MCC/SCN-47/PCA-LHR/TEAM-B- 02/2011/S.GULTAMATE/SH WASEEM/ADC-ADJ/PACCS/2012
02.	Cus/4074(B)/2012/ PACCS	M/s. Universal Trading Company	MCC/SCN-48/PCA-LHR/TEAM-A- 04/2011/S.GULTAMATE/ADNAN AHMED/ADC-ADJ/PACCS/2012



		Mr. Adnan Ahmed Shaikh	
03.	Cus/4074(C)/2012/ PACCS	M/s. Usama Enterprises  Ms. Humaria Ali	MCC/SCN-46/PCA-LHR/TEAM-A- 01/2011/S.GULTAMATE/HUMARIA ALI/ADC-ADJ/PACCS/2012

5. Being aggrieved and dissatisfied with the Customs Order-in-Original, the appellants filed the instant appeal before this Tribunal on the grounds, which are reproduced as under:-

1. That the impugned Order-In-Appeal No. Order-In-Appeal (9285 to 9288) vide dated:10/10/2014, inNo.4074(A) of 2012, passed by the Respondent No.1is time barred, void ab-initio, not maintainable as per facts of the instant case, arbitrary, illogical, irrational, Audi Alteram Partem.

2. That the show cause notice was served in pursuance of the contravention report of the Directorate of Post-Clearance Audit, (PaCCS) Lahore, the same is illegal and unlawful arouse out of the contravention made .by PaCCS Lahore, all proceedings made at Karachi, based respondents were without plausible reasoning and grounds which was made the base by respondents for passing Order-in-Original and Order-in-Appeal by the respondents and passed illegal and unlawful order on the basis of the same.

3. That the respondents have seriously erred to invoke such liability which is hit by limitation under Customs Act, 1969. There is no deliberate or mala fide nor false statement given by the appellant's company, hence invoke of sections 32(1) and 32(2) is unlawful and illegal. What has been imported has been declared on Goods Declarations. The goods were released after proper application of mind by the concerned customs officials hence the impugned order is liable to be set aside. Hence, show cause notice issued is illegal, unlawful and without jurisdiction.

ATTESTED



That goods/consignments were cleared after due process and completion of formalities by custom sections and concerned officers, wherein all automated Notifications, SROs were fully equipped with PCT heading, structure, duties, statutory notifications in MCC- PaCCS system, and goods clearance and benefits claimed by appellant were accepted otherwise the same would have been declined atomically by system. It is pertinent to mention here that show cause notice was issued after lapse of almost five years.

5. That neither Respondent No.2 nor Respondent No.2 & 3 tried to consider that the goods imported were Dyes Intermediates and the exemptions sought through online MCC- PaCCS system as per HS-Codes as feed in the system by custom authorities or by the concerned FBR sections. The respondents could not provide any substantial piece of evidence that the appellant's goods were not Dyes Intermediates, the same was unjust and illegal, without lawful authority. In the



light of settled principles of law and evidence act and as reported in 2016 PTD (Trib) 384, relevant cl at page 42 G i.e Qanoone- Shahdat Order 1984, Article 117 and 121, burden of proof lies on department. Department had to prove allegations in terms of Arts of QSO 1984 , and department miserably failed to prove the same even before issuing such show cause notice and making base of impugned **Order-In-Appeal**.

6. That in the light of reported Judgment PTD 2009 246, regarding the instant case and authority used by respondents which is in fact misused by Directorate General of Post Clearance Audit and Respondent No.2, as under section 195 of the act Board or Collector was empowered to reopen a case but in the instant case situation is just repugnant to the spirit of the section and act. Hence issuance of show cause notice, by respondent No.2 for reopening the assessment order and reassessing the impugned goods was without jurisdiction, that in the light of the aforesaid judgment of the High Court is binding on all subordinate Judicial and quasi judicial fora.
7. That notwithstanding to the fact that the impugned proceedings initiated by the learned Additional Collector PaCCS are beyond Jurisdiction. The while respondent No.2 had no jurisdiction than question of recovery under income tax ordinance 2001 could not be agitated at that stage. As respondent No.2 had authority to collect the taxes at import stage only. And in case of default if any the recovery proceedings could only be initiated by Commissioner of Income Tax.
8. That it is pertinent to mention here that provisions of "collection" and "recovery" of any levy, duty or tax are independent of each other so if ordinance empowers the collector of customs to collect tax only, the powers relating to recovery of a tax cannot be assumed automatically.
9. That therefore the legislature has expressly conferred the powers under section 162 of Income Tax Ordinance upon the commissioner to pass an order for recovery of amount of income tax not paid, at import stage. Honorable Appellate Tribunal in identical cases, has clearly held that action regarding recovery of income tax/Sales Tax on the part of custom authorities, is itself without any lawful authority/jurisdiction. i.e. **M/s Global Marketing Services V/s Model Collectorate, PTCL 2010 clause 564.II. M/s. Nadeem Electronics (Pvt) v/s Collector, PTD 1999, Page. 1912**, it is held that for recovery of Sales Tax under section 36 of Sales Tax shall apply for which the appropriate officer of inland revenues empowered, so the impugned order is in clear negation of aforesaid ruling of apex courts as well as mandatory provision of law and without having authority.
10. That similarly section 6 of Sale Tax, should be read with section 36 of the Sales Tax Act, wherein section 6 is given in Appellate Tribunal Order, which is related to normal mode of collection instead of recovery of sales Tax.
11. That the learned Respondents ignored legal provisions by not considering the important aspect of the case and provisions i.e. section 7 of the Sales Tax Act 1990, as the same provides the mechanism for determination of tax liability by a registered person. First provision to section 7(1) of the act provides the method to make adjustment of input tax. In the light of above provisions of Sales Tax Act





1990, if sales tax has not been at source i.e. at import stage, the same would be adjustable during same tax period and thereafter. Hence there was no loss of revenue to the public exchequer. Thus, invoking the provisions of Sales Tax Act 1990, were unwarranted, irrespective of the fact that respondent No.2 had no jurisdiction to pass an order for recovery of alleged amount of Sales Tax in respect of imported, assessed and cleared consignments by his subordinate staff/sections.

12. That in the light of Judgment reported in 2016 PTD 2891 (Trib), 2016 PTD (Trib) 384, and other reported judgments, wherein it is categorically discussed and held about jurisdiction and powers of the Customs authorities in relation to sales tax, income tax and excise duty as:-

Point No.1 "-- Custom authorities, including DG (I&I) (Federal Board of Revenue) could not assume jurisdiction in the Sales Tax or Income Tax matters, except the situations expressly provided in the relevant statutes--",

Point No.2 "Customs authorities, had no powers to recover the short-paid sales tax, excise duty or withholding tax under the instrument of Customs Act, 1969, though they had powers to collect those levies at the import stage in the manner the customs duties were collected"

13. That SHOW-CASE-NOTICE was issued on 02/02/2012, issued by Additional Collector Adjudication, Model Customs Collectorate of PaCCS, Custom House Karachi, Order-In- Original No.109 of 2012 passed on 28-05-2012 Respondent No.2 and impugned Order-in-Appeal, is passed by Respondent No.1 beyond statutory period of 120 days as reported in 2014 PTD (Trib) 52, (Customs Appellate Tribunal, Karachi in Ms/ DEWAN SALMAN FIBER LTD V/S THE COLLECTOR (APPEALS) and 2 others and the order of the same was neither communicated to the appellant, its counsel or authorized representative, neither the same came into knowledge of the appellant.

14. That it came into knowledge of the appellant when a letters for attachment of movable property, blocking of bank accounts were received by the appellant and block the weboc customer ID of the appellant, i.e. reference 1<sup>st</sup> Letter, C.NO.368/KAPE/DC-Recovery/2016 vide dated: 14<sup>th</sup> November 2016, (Annex-.....), 2<sup>nd</sup> Letter of 21<sup>st</sup> November 2016 (Annex-.....) with subject that attachment of the Bank Accounts for recovery of government and attachment of movable property for recovery of government dues, the same not only shocked appellant but the same was astonishing situation for party, as it the appeal was pending before Collector Appeals since last couple of years.

15. That after that hurriedly and without waste of time & further delay, appellant inquired from the counsel, as well as authorized person about the status of the appeal and letters from custom authorities and whether any such copy of the order from collector appeals has been received, wherein it is found that neither copy of order was communicated to the appellant nor to the counsel or authorized person was intimated, resultantly an application for certified copy of the order in appeal before collector appeals was submitted on 16.12.2016 in the





office of the collector of customs (Appeals) 81-C, PECHS, Block-6, Karachi, but could not get the certified copy of the same till today (**Copy of the application received is annexed as Annex.....**). After making personal efforts order-in-appeal against order-in-original No.109.2012 was sought and filed instant appeal before this honorable tribunal against such acts of the respondents.

16. That not only this but respondents have blocked Bank Accounts and ID i.e

NAME OF PARTY	GD NO.
Humaira Ali	i. CRN: I-HC-808418-281008
	ii. CRN: I-HC-703294-100708
Proprietor M/s Usama Enterprise	iii. CRN: I-HC-642647-140508
	iv. CRN: I-HC-557490-250208
	v. CRN: I-HC-426236-231007
NTN No. 1312 855-8,	vi. CRN: I-HC-417769-101007
	vii. CRN: I-HC-325432-130707
	viii. CRN: I-HC-290459-070607
	ix. CRN: I-HC-230898-040407
	x. CRN: I-HC-226810-300307
	xi. CRN: I-HC-186731-140207
	xii. CRN: I-HC-172044-250107
	xiii.
<b>BLOCKED ID AND ACCOUNTS OF THE IMPORTER</b>	
<b>Meezan Bank Vehari Road Branch Multan</b>	
1) A/c Title: Usama Enterprises A/c No.0502-0100375597	
2) A/C Title: Humaira Ali, Ac/ No:0502-0101158585,	
<b>Bank Al-Habib Ltd, Ghalla Mandi Branch Multan</b>	
3) A/C Title: Humaira Ali, A/c No. 0014-0081-00824-01-3	
4) A/c Title: Usama Enterprises A/c No. 0014-0081-000244-01-7	
1) Weboc ID of the appellant Proprietor: Customer ID No. TR-0-1312855, HUMAIRA ALI. CNIC No. 36302-0413048-2, NTN No. 1312 855-8, GST No.04-90-9999-398-91,	

**ATTESTED**



17. Being aggrieved and dissatisfied with the Order-In-Appeal (9285 to 9288) dated:10/10/2014, in No.4074(A) of 2012, passed by the Respondent No.1 (Annexure- C).



18. In relation to the challenge against **Order-In-Appeal (9285 to 9288)** dated: 10/10/2014, against order in Original No.4074(A) of 2012, passed by the Respondent No.1, which is passed after statutory period and delay of .....days.

19. That Respondent No.1 has passed impugned order in haste and ignored statutory obligation, and binding of the apex court's precedents, hence the same is passed in absence of the appellant which also attracts the dictum of law i.e **Audi Alteram Partem (No man should be condemned unheard)** and the same is non-speaking order, uncommunicated to appellant, representative, individual or any on the behalf of the appellant violating provision of CPC

20. That thereby depriving thereby the stake holder/appellant of fair trial, as envisaged under article 10-A of the Constitution of Pakistan 1973. It is clear cut discrimination and excessive misuse by the respondents and ultra vires u/s 24-A of General Clauses Act and to the spirit of Customs Act 1969 and precedents and directions passed by apex courts and judicial fora.

21. That the appellant craves leave of this honorable Authority to prefer grounds at the time of arguments.

22. In the light of preceding narrations, the Appellant and victim of **Order-In-Appeal No. 9285 to 9288/2014** dated: 10/10/2014, prays before this Honorable Tribunal that this appeal may be allowed, and

I. To set aside the impugned Order-In-Appeal No. 9285 to 9288/2014 dated: 10/10/2014, passed by respondent No.1 is null and void which is ultra-varies to provisions of the Custom Act 1969 as well as 24-A of General Clauses Act repugnant to the dictates of law, natural justice and the Constitution of Pakistan 1973.

II. Declare Impugned **Order-In-Appeal** passed by respondent No.1, is non-speaking, arbitrary, irritational, illogical, illegal and unlawful, and the same is without justification.

III. Declare that the Respondents, has failed to appreciate and follow proper procedure as per act and violated the provisions of the apex courts and judicial fora, while exercising their powers beyond Jurisdiction.

IV. Declare that goods import/consignments of "**Mono-sodium Gulamate**" (Annex -----) under PCT Heading No.2922.4210, attracting customs duty @ 5%, Sales Tax @0% and Income Tax @1% by availing exemption under SRO 525(I)2006 dated: 05-06-2006, SRO 509(I)2007 dated: 09-06-2007 and SRO 638(I)2005, were rightly claimed by the appellant.

V. Restrained Respondents and the officers of the Respondents 1 to 3 and Respondent No.4 and 5, for illegal recovery, attachment of movable and immovable properties of the appellant and attachment/blocking/freezing the bank accounts of the appellant till final disposal of the title appeal as mentioned in para 16 and 17 of the grounds of the appeal.

ATTESTED





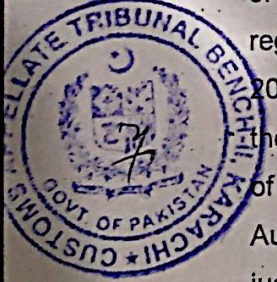
- VI. To direct respondents to unblock the web Custom ID of the appellant, to let its business run smoothly.
- VII. Restrained respondents from taking any adverse cohesive actions or steps against appellant, its staff till the final decision of instant appeal.

Any other relief which this Hon'ble tribunal deems fit and proper as per facts and circumstances of appeal please.

6. The appellant filed the instant appeal on the basis of grounds enumerated therein, the advocate on the date of hearing argued the case strictly in accordance with those. From the Respondents side despite issuance of notices none appeared on behalf of the respondent. Furthermore no cross objections under Sub Section 4 of Section 194A of the Act were filed within the stipulated period of 30 days by the respondent no.1, despite giving ample opportunity and specific directions to do so on or before 08.11.2018 positively. This proves the respondent's lackluster approach and non-serious attitude/intent in defending the case, confirming that they have made the case on assumption/presumption and conjectures. Hence, they are not in a position to controvert the grounds adopted by the appellant in regards to the veracity of power/jurisdiction of the respondents no. 1 & 2 and legality of the impugned show cause notice and Order in Original.

7. In view of the above backdrop having considered the facts and circumstances of the case in hands juxtaposed with the case laws of the honorable higher and Superior Courts, it reveals and equips my authority to pen down the conclusion of the controversy on two counts. Firstly, the subject issue is time barred for more than 870 seven days which fact alone is much farther than the issue resolved on same count by the Honorable Supreme Court reported as 2012 SCMR 617 (Sadia Jabbar case), wherein only the matter was barred by 4 days. Secondly, the issue is clouded by the jurisdiction of the Customs Authorities with regard to collection and recovery of the taxes. In this regard, the reliance is heavily placed upon *inter alia* the case laws PTCL 2010 CL 564; 2019 PTD (Trib.) 1786 wherein the tribunal has settled the issue categorically and lucidly thereby holding that the mandate of the Customs Authorities is to the extent of collection of taxes alone and whence there comes the question of recovery, the Customs Authorities seize to have effect, for the ready reference, the relevant para of the judgment reported as 2015 P T D 702 (MUHAMMAD MEASUM and others versus FEDERATION OF PAKISTAN through Secretary and others) is reproduced here under:

ATTESTED





"Insofar as the invoking the provisions of section 148 of the Income Tax Ordinance, 2001, are concerned, the same also appear to be misconceived in as much as, the said provision only deals with the manner and mechanism for Collection of advance tax on the goods at import stage. By implication, it does not convert the levy of Income Tax into a Customs duty merely for the fact that it is being collected at import stage. The jurisdiction conferred upon the Collector of Customs under section 148 of the Income Tax Ordinance, 2001, is only by way of convenience and as an administrative measure, and under no circumstances and by no stretch of imagination the collection of advance income tax at the import stage would convert it into a customs duty, for the recovery of which the provisions of section 32 of the Customs Act, 1969, punishable under clause (14) of section 156(1) *ibid*, could be invoked. Hence, the FIR in this respect is also unwarranted, without jurisdiction and any lawful authority and is liable to be quashed."

8. Furthermore the judgment *supra* also deals with regard to the sales tax being not the jurisdiction of the Customs Authorities and in this regard the para 20 of the judgment *supra* is the relevant portion thereof.

9. Thus, I do not feel any hesitation in concluding that the impugned order in appeal Nos.9285 to 9288/2014 dated 10.10.2014 is *ab initio* void and shorn of any legal reasoning which is hereby set aside after the captioned appeals stand allowed.

**ATTESTED**

Orders passed and announced accordingly.

*sel*

(Muhammad Sajid Abbasi)  
Chairman/ Member Judicial-II  
Karachi

This judgment order consists of (08) pages and each page bears my initials and office seal.

*sel*

(Muhammad Sajid Abbasi)  
Chairman/ Member Judicial-II  
Karachi

